

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1492

**Introduced by Assembly Member Gatto
(Coauthor: Assembly Member Atkins)**

February 27, 2015

An act to amend Section 300 of, and to amend and add Sections 296, 298, and 299 of, the Penal Code, relating to DNA samples.

LEGISLATIVE COUNSEL’S DIGEST

AB 1492, as amended, Gatto. Forensic testing: DNA samples.

(1) Existing law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election (the DNA Act) requires any adult person who is arrested or charged with any felony offense to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. Existing law requires that blood specimens and buccal swab samples be forwarded promptly to the Department of Justice for analysis. Existing case law, *People v. Buza* (2014) 231 Cal.App.4th 1446, for which review has been granted by the California Supreme Court, holds that the DNA

Act, to the extent it requires felony arrestees to submit to a DNA sample for law enforcement analysis and inclusion in the state and federal DNA databases, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, unreasonably intrudes on the arrestee's expectation of privacy and is invalid under the California Constitution. The DNA Act provides that it may be amended by a statute passed by each house of the Legislature that furthers the purpose of the measure.

This bill would state that it is the intention of the Legislature to further the purposes of the DNA Act in light of the above-specified case law. The bill would, if the California Supreme Court rules to uphold *People v. Buza*, limit the above-specified requirements to persons arrested for specified sex offenses or serious or violent felonies. The bill would, if the California Supreme Court rules to uphold *People v. Buza*, require that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony be forwarded to the department after a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been made.

(2) Existing law, as amended by the DNA Act, requires that a DNA specimen and sample be destroyed and that a searchable database profile be expunged from that databank program if the person from whom the specimen or sample was collected has no past or present offense or pending charge which qualifies that person for inclusion in the database and if that person submits an application, as specified. Existing law gives the court discretion to grant or deny the application.

This bill would, if the California Supreme Court rules to uphold *People v. Buza*, require the DNA specimen and sample to be destroyed and the searchable database profile expunged from the database without the requirement of an application.

(3) Existing law, as amended by the DNA Act, states that its provisions do not prohibit collection and analysis of specimens, samples, or print impressions as a condition of a plea for an offense that does not require the taking of samples and specimens.

The bill would state that it is the intent of the Legislature ~~to allow that if~~ buccal swab samples ~~to be~~ *are* taken for DNA analysis as a condition of a plea or reduction or dismissal of charges, *that all uses of the DNA sample be disclosed to the defendant in writing, that consent be obtained in writing, that the defendant sign a written agreement allowing his or her buccal swab sample or blood sample to be taken*

for DNA analysis, and that the defendant have an opportunity to consult with counsel prior to signing the agreement. The bill would permit a law enforcement agency to use any publicly available database to aid in the investigation of a crime.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to limit the
2 analysis of buccal swab samples and blood samples taken from
3 felony arrestees for purposes of DNA analysis only to the extent
4 required by the decision in *People v. Buza*, and to further the
5 purposes of the DNA Fingerprint, Unsolved Crime and Innocence
6 Protection Act, Proposition 69, approved by the voters at the
7 November 2, 2004, statewide general election, in light of that
8 decision.

9 SEC. 2. It is the intent of the Legislature ~~to allow that if~~ buccal
10 swab samples ~~to be~~ are taken for DNA analysis as a condition of
11 a plea or reduction or dismissal of charges, ~~provided that all uses~~
12 of the DNA sample ~~have been~~ shall first be disclosed to the
13 defendant in writing, that consent ~~has been~~ shall be obtained in
14 writing, ~~and that the defendant has signed that the defendant shall~~
15 sign a written agreement allowing his or her buccal ~~swap~~ swab
16 sample or blood sample to be taken for DNA analysis, *and that*
17 *the defendant shall have an opportunity to consult with his or her*
18 *legal counsel prior to signing the agreement.* It is the intent of the
19 Legislature that buccal swab samples taken as a condition of a plea
20 or reduction or dismissal of charges be done on the basis of
21 individualized consideration.

22 SEC. 3. Section 296 of the Penal Code is amended to read:

23 296. (a) The following persons shall provide buccal swab
24 samples, right thumbprints, and a full palm print impression of
25 each hand, and any blood specimens or other biological samples
26 required pursuant to this chapter for law enforcement identification
27 analysis:

28 (1) Any person, including any juvenile, who is convicted of or
29 pleads guilty or no contest to any felony offense, or is found not
30 guilty by reason of insanity of any felony offense, or any juvenile

1 who is adjudicated under Section 602 of the Welfare and
2 Institutions Code for committing any felony offense.

3 (2) Any adult person who is arrested for or charged with any of
4 the following felony offenses:

5 (A) Any felony offense specified in Section 290 or attempt to
6 commit any felony offense described in Section 290, or any felony
7 offense that imposes upon a person the duty to register in California
8 as a sex offender under Section 290.

9 (B) Murder or voluntary manslaughter or any attempt to commit
10 murder or voluntary manslaughter.

11 (C) Commencing on January 1, 2009, any adult person arrested
12 or charged with any felony offense.

13 (3) Any person, including any juvenile, who is required to
14 register under Section 290 or 457.1 because of the commission of,
15 or the attempt to commit, a felony or misdemeanor offense, or any
16 person, including any juvenile, who is housed in a mental health
17 facility or sex offender treatment program after referral to such
18 facility or program by a court after being charged with any felony
19 offense.

20 (4) The term “felony” as used in this subdivision includes an
21 attempt to commit the offense.

22 (5) This chapter does not prohibit collection and analysis of
23 specimens, samples, or print impressions as a condition of a plea
24 for a nonqualifying offense.

25 (b) The provisions of this chapter and its requirements for
26 submission of specimens, samples, and print impressions as soon
27 as administratively practicable shall apply to all qualifying persons
28 regardless of sentence imposed, including a sentence of death, life
29 without the possibility of parole, or a life or indeterminate term,
30 or other disposition rendered in the case of an adult or juvenile
31 tried as an adult, or whether the person is diverted, fined, or referred
32 for evaluation, and regardless of disposition rendered or placement
33 made in the case of a juvenile who is found to have committed
34 any felony offense or is adjudicated under Section 602 of the
35 Welfare and Institutions Code.

36 (c) The provisions of this chapter and its requirements for
37 submission of specimens, samples, and print impressions as soon
38 as administratively practicable by qualified persons as described
39 in subdivision (a) shall apply regardless of placement or
40 confinement in any mental hospital or other public or private

1 treatment facility, and shall include, but not be limited to, the
2 following persons, including juveniles:

3 (1) Any person committed to a state hospital or other treatment
4 facility as a mentally disordered sex offender under former Article
5 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
6 Division 6 of the Welfare and Institutions Code.

7 (2) Any person who has a severe mental disorder as set forth
8 within the provisions of Article 4 (commencing with Section 2960)
9 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

10 (3) Any person found to be a sexually violent predator pursuant
11 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
12 2 of Division 6 of the Welfare and Institutions Code.

13 (d) The provisions of this chapter are mandatory and apply
14 whether or not the court advises a person, including any juvenile,
15 that he or she must provide the databank and database specimens,
16 samples, and print impressions as a condition of probation, parole,
17 or any plea of guilty, no contest, or not guilty by reason of insanity,
18 or any admission to any of the offenses described in subdivision
19 (a).

20 (e) If at any stage of court proceedings the prosecuting attorney
21 determines that specimens, samples, and print impressions required
22 by this chapter have not already been taken from any person, as
23 defined under subdivision (a) of Section 296, the prosecuting
24 attorney shall notify the court orally on the record, or in writing,
25 and request that the court order collection of the specimens,
26 samples, and print impressions required by law. However, a failure
27 by the prosecuting attorney or any other law enforcement agency
28 to notify the court shall not relieve a person of the obligation to
29 provide specimens, samples, and print impressions pursuant to this
30 chapter.

31 (f) Prior to final disposition or sentencing in the case the court
32 shall inquire and verify that the specimens, samples, and print
33 impressions required by this chapter have been obtained and that
34 this fact is included in the abstract of judgment or dispositional
35 order in the case of a juvenile. The abstract of judgment issued by
36 the court shall indicate that the court has ordered the person to
37 comply with the requirements of this chapter and that the person
38 shall be included in the state's DNA and Forensic Identification
39 Database and Databank Program and be subject to this chapter.

1 However, failure by the court to verify specimen, sample, and
2 print impression collection or enter these facts in the abstract of
3 judgment or dispositional order in the case of a juvenile shall not
4 invalidate an arrest, plea, conviction, or disposition, or otherwise
5 relieve a person from the requirements of this chapter.

6 (g) This section shall become inoperative if the California
7 Supreme Court rules to uphold the California Court of Appeal
8 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
9 to the provisions of Section 296 of the Penal Code, as amended
10 by Section 3 of the DNA Fingerprint, Unsolved Crime and
11 Innocence Protection Act, Proposition 69, approved by the voters
12 at the November 2, 2004, general election, in which case this
13 section shall become inoperative immediately upon that ruling
14 becoming final.

15 SEC. 4. Section 296 is added to the Penal Code, to read:

16 296. (a) The following persons shall provide buccal swab
17 samples, right thumbprints, and a full palm print impression of
18 each hand, and any blood specimens or other biological samples
19 required pursuant to this chapter for law enforcement identification
20 analysis:

21 (1) Any person, including any juvenile, who is convicted of or
22 pleads guilty or no contest to any felony offense, or is found not
23 guilty by reason of insanity of any felony offense, or any juvenile
24 who is adjudicated under Section 602 of the Welfare and
25 Institutions Code for committing any felony offense.

26 (2) Any adult person who is arrested for or charged with any of
27 the following felony offenses:

28 (A) Any felony offense specified in Section 290 or attempt to
29 commit any felony offense described in Section 290, or any felony
30 offense that imposes upon a person the duty to register in California
31 as a sex offender under Section 290.

32 (B) Murder or voluntary manslaughter or any attempt to commit
33 murder or voluntary manslaughter.

34 (C) Any adult person arrested or charged with a felony offense
35 specified in subdivision (c) of Section 667.5 or subdivision (c) of
36 Section 1192.7.

37 (3) Any person, including any juvenile, who is required to
38 register under Section 290 or 457.1 because of the commission of,
39 or the attempt to commit, a felony or misdemeanor offense, or any
40 person, including any juvenile, who is housed in a mental health

1 facility or sex offender treatment program after referral to such
2 facility or program by a court after being charged with any felony
3 offense.

4 (4) The term “felony” as used in this subdivision includes an
5 attempt to commit the offense.

6 (5) This chapter does not prohibit collection and analysis of
7 specimens, samples, or print impressions as a condition of a plea
8 for a nonqualifying offense.

9 (b) The provisions of this chapter and its requirements for
10 submission of specimens, samples, and print impressions as soon
11 as administratively practicable shall apply to all qualifying persons
12 regardless of sentence imposed, including a sentence of death, life
13 without the possibility of parole, or a life or indeterminate term,
14 or other disposition rendered in the case of an adult or juvenile
15 tried as an adult, or whether the person is diverted, fined, or referred
16 for evaluation, and regardless of disposition rendered or placement
17 made in the case of juvenile who is found to have committed any
18 felony offense or is adjudicated under Section 602 of the Welfare
19 and Institutions Code.

20 (c) The provisions of this chapter and its requirements for
21 submission of specimens, samples, and print impressions as soon
22 as administratively practicable by qualified persons as described
23 in subdivision (a) shall apply regardless of placement or
24 confinement in any mental hospital or other public or private
25 treatment facility, and shall include, but not be limited to, the
26 following persons, including juveniles:

27 (1) Any person committed to a state hospital or other treatment
28 facility as a mentally disordered sex offender under former Article
29 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
30 Division 6 of the Welfare and Institutions Code.

31 (2) Any person who has a severe mental disorder as set forth
32 within the provisions of Article 4 (commencing with Section 2960)
33 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

34 (3) Any person found to be a sexually violent predator pursuant
35 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
36 2 of Division 6 of the Welfare and Institutions Code.

37 (d) The provisions of this chapter are mandatory and apply
38 whether or not the court advises a person, including any juvenile,
39 that he or she must provide the data bank and database specimens,
40 samples, and print impressions as a condition of probation, parole,

1 or any plea of guilty, no contest, or not guilty by reason of insanity,
2 or any admission to any of the offenses described in subdivision
3 (a).

4 (e) If at any stage of court proceedings the prosecuting attorney
5 determines that specimens, samples, and print impressions required
6 by this chapter have not already been taken from any person, as
7 defined under subdivision (a) of Section 296, the prosecuting
8 attorney shall notify the court orally on the record, or in writing,
9 and request that the court order collection of the specimens,
10 samples, and print impressions required by law. However, a failure
11 by the prosecuting attorney or any other law enforcement agency
12 to notify the court shall not relieve a person of the obligation to
13 provide specimens, samples, and print impressions pursuant to this
14 chapter.

15 (f) Prior to final disposition or sentencing in the case the court
16 shall inquire and verify that the specimens, samples, and print
17 impressions required by this chapter have been obtained and that
18 this fact is included in the abstract of judgment or dispositional
19 order in the case of a juvenile. The abstract of judgment issued by
20 the court shall indicate that the court has ordered the person to
21 comply with the requirements of this chapter and that the person
22 shall be included in the state's DNA and Forensic Identification
23 Database and Databank Program and be subject to this chapter.

24 However, failure by the court to verify specimen, sample, and
25 print impression collection or enter these facts in the abstract of
26 judgment or dispositional order in the case of a juvenile shall not
27 invalidate an arrest, plea, conviction, or disposition, or otherwise
28 relieve a person from the requirements of this chapter.

29 (g) This section shall only become operative if the California
30 Supreme Court rules to uphold the California Court of Appeal
31 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
32 to the provisions of Section 296 of the Penal Code, as amended
33 by Section 3 of the DNA Fingerprint, Unsolved Crime and
34 Innocence Protection Act, Proposition 69, approved by the voters
35 at the November 2, 2004, general election, in which case this
36 section shall become operative immediately upon that ruling
37 becoming final.

38 SEC. 5. Section 298 of the Penal Code is amended to read:

39 298. (a) The Secretary of the Department of Corrections and
40 Rehabilitation, or the Chief Administrative Officer of the detention

1 facility, jail, or other facility at which the blood specimens, buccal
2 swab samples, and thumb and palm print impressions were
3 collected shall cause these specimens, samples, and print
4 impressions to be forwarded promptly to the Department of Justice.
5 The specimens, samples, and print impressions shall be collected
6 by a person using a Department of Justice approved collection kit
7 and in accordance with the requirements and procedures set forth
8 in subdivision (b).

9 (b) (1) The Department of Justice shall provide all blood
10 specimen vials, buccal swab collectors, mailing tubes, labels, and
11 instructions for the collection of the blood specimens, buccal swab
12 samples, and thumbprints. The specimens, samples, and
13 thumbprints shall thereafter be forwarded to the DNA Laboratory
14 of the Department of Justice for analysis of DNA and other forensic
15 identification markers.

16 Additionally, the Department of Justice shall provide all full
17 palm print cards, mailing envelopes, and instructions for the
18 collection of full palm prints. The full palm prints, on a form
19 prescribed by the Department of Justice, shall thereafter be
20 forwarded to the Department of Justice for maintenance in a file
21 for identification purposes.

22 (2) The withdrawal of blood shall be performed in a medically
23 approved manner. Only health care providers trained and certified
24 to draw blood may withdraw the blood specimens for purposes of
25 this section.

26 (3) Buccal swab samples may be procured by law enforcement
27 or corrections personnel or other individuals trained to assist in
28 buccal swab collection.

29 (4) Right thumbprints and a full palm print impression of each
30 hand shall be taken on forms prescribed by the Department of
31 Justice. The palm print forms shall be forwarded to and maintained
32 by the Bureau of Criminal Identification and Information of the
33 Department of Justice. Right thumbprints also shall be taken at
34 the time of the collection of samples and specimens and shall be
35 placed on the sample and specimen containers and forms as
36 directed by the Department of Justice. The samples, specimens,
37 and forms shall be forwarded to and maintained by the DNA
38 Laboratory of the Department of Justice.

39 (5) The law enforcement or custodial agency collecting
40 specimens, samples, or print impressions is responsible for

1 confirming that the person qualifies for entry into the Department
2 of Justice DNA Database and Databank Program prior to collecting
3 the specimens, samples, or print impressions pursuant to this
4 chapter.

5 (6) The DNA Laboratory of the Department of Justice is
6 responsible for establishing procedures for entering databank and
7 database information.

8 (c) (1) Persons authorized to draw blood or obtain samples or
9 print impressions under this chapter for the databank or database
10 shall not be civilly or criminally liable either for withdrawing blood
11 when done in accordance with medically accepted procedures, or
12 for obtaining buccal swab samples by scraping inner cheek cells
13 of the mouth, or thumb or palm print impressions when performed
14 in accordance with standard professional practices.

15 (2) There is no civil or criminal cause of action against any law
16 enforcement agency or the Department of Justice, or any employee
17 thereof, for a mistake in confirming a person's or sample's
18 qualifying status for inclusion within the database or databank or
19 in placing an entry in a databank or a database.

20 (3) The failure of the Department of Justice or local law
21 enforcement to comply with Article 4 or any other provision of
22 this chapter shall not invalidate an arrest, plea, conviction, or
23 disposition.

24 (d) This section shall become inoperative if the California
25 Supreme Court rules to uphold the California Court of Appeal
26 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
27 to the provisions of Section 298 of the Penal Code, as amended
28 by Section 6 of the DNA Fingerprint, Unsolved Crime and
29 Innocence Protection Act, Proposition 69, approved by the voters
30 at the November 2, 2004, statewide general election, in which case
31 this section shall become inoperative immediately upon that ruling
32 becoming final.

33 SEC. 6. Section 298 is added to the Penal Code, to read:

34 298. (a) (1) The Secretary of the Department of Corrections
35 and Rehabilitation, or the Chief Administrative Officer of the
36 detention facility, jail, or other facility at which the blood
37 specimens, buccal swab samples, and thumb and palm print
38 impressions were collected shall cause these specimens, samples,
39 and print impressions to be forwarded promptly to the Department
40 of Justice, except that a blood specimen or buccal swab sample

1 taken from a person arrested for the commission of a felony as
2 specified in paragraph (2) of subdivision (a) of Section 296 shall
3 be forwarded to the Department of Justice after a judicial
4 determination of probable cause to believe the person has
5 committed the offense for which he or she was arrested has been
6 made pursuant to Section 825. The specimens, samples, and print
7 impressions shall be collected by a person using a Department of
8 Justice approved collection kit and in accordance with the
9 requirements and procedures set forth in subdivision (b).

10 (2) A blood specimen or buccal swab sample taken from a
11 person arrested for the commission of a felony as specified in
12 paragraph (2) of subdivision (a) of Section 296 that has not been
13 forwarded to the Department of Justice within six months following
14 the arrest of that person because the agency that took the blood
15 specimen or buccal swab sample has not received notice to forward
16 the DNA specimen or sample to the Department of Justice for
17 inclusion in the state's DNA and Forensic Identification Database
18 and Databank Program pursuant to paragraph (1) following a
19 determination of probable cause, shall be destroyed by the agency
20 that collected the blood specimen or buccal swab sample.

21 (b) (1) The Department of Justice shall provide all blood
22 specimen vials, buccal swab collectors, mailing tubes, labels, and
23 instructions for the collection of the blood specimens, buccal swab
24 samples, and thumbprints. The specimens, samples, and
25 thumbprints shall thereafter be forwarded to the DNA Laboratory
26 of the Department of Justice for analysis of DNA and other forensic
27 identification markers.

28 Additionally, the Department of Justice shall provide all full
29 palm print cards, mailing envelopes, and instructions for the
30 collection of full palm prints. The full palm prints, on a form
31 prescribed by the Department of Justice, shall thereafter be
32 forwarded to the Department of Justice for maintenance in a file
33 for identification purposes.

34 (2) The withdrawal of blood shall be performed in a medically
35 approved manner. Only health care providers trained and certified
36 to draw blood may withdraw the blood specimens for purposes of
37 this section.

38 (3) Buccal swab samples may be procured by law enforcement
39 or corrections personnel or other individuals trained to assist in
40 buccal swab collection.

(4) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the collection of samples and specimens and shall be placed on the sample and specimen containers and forms as directed by the Department of Justice. The samples, specimens, and forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(5) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the Department of Justice DNA and Forensic Identification Database and Databank Program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

(6) The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering databank and database information.

(c) (1) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the databank or database shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining buccal swab samples by scraping inner cheek cells of the mouth, or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or databank or in placing an entry in a databank or a database.

(3) The failure of the Department of Justice or local law enforcement to comply with Article 4 or any other provision of this chapter shall not invalidate an arrest, plea, conviction, or disposition.

(d) This section shall only become operative if the California Supreme Court rules to uphold the California Court of Appeal decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard to the provisions of Section 298 of the Penal Code, as amended by Section 6 of the DNA Fingerprint, Unsolved Crime and

1 Innocence Protection Act, Proposition 69, approved by the voters
2 at the November 2, 2004, statewide general election, in which case
3 this section shall become operative immediately upon that ruling
4 becoming final.

5 SEC. 7. Section 299 of the Penal Code is amended to read:

6 299. (a) A person whose DNA profile has been included in
7 the databank pursuant to this chapter shall have his or her DNA
8 specimen and sample destroyed and searchable database profile
9 expunged from the databank program pursuant to the procedures
10 set forth in subdivision (b) if the person has no past or present
11 offense or pending charge which qualifies that person for inclusion
12 within the state's DNA and Forensic Identification Database and
13 Databank Program and there otherwise is no legal basis for
14 retaining the specimen or sample or searchable profile.

15 (b) Pursuant to subdivision (a), a person who has no past or
16 present qualifying offense, and for whom there otherwise is no
17 legal basis for retaining the specimen or sample or searchable
18 profile, may make a written request to have his or her specimen
19 and sample destroyed and searchable database profile expunged
20 from the databank program if any of the following apply:

21 (1) Following arrest, no accusatory pleading has been filed
22 within the applicable period allowed by law charging the person
23 with a qualifying offense as set forth in subdivision (a) of Section
24 296 or if the charges which served as the basis for including the
25 DNA profile in the state's DNA and Forensic Identification
26 Database and Databank Program have been dismissed prior to
27 adjudication by a trier of fact;

28 (2) The underlying conviction or disposition serving as the basis
29 for including the DNA profile has been reversed and the case
30 dismissed;

31 (3) The person has been found factually innocent of the
32 underlying offense pursuant to Section 851.8, or Section 781.5 of
33 the Welfare and Institutions Code; or

34 (4) The defendant has been found not guilty or the defendant
35 has been acquitted of the underlying offense.

36 (c) (1) The person requesting the databank entry to be expunged
37 must send a copy of his or her request to the trial court of the
38 county where the arrest occurred, or that entered the conviction or
39 rendered disposition in the case, to the DNA Laboratory of the
40 Department of Justice, and to the prosecuting attorney of the county

1 in which he or she was arrested or, convicted, or adjudicated, with
2 proof of service on all parties. The court has the discretion to grant
3 or deny the request for expungement. The denial of a request for
4 expungement is a nonappealable order and shall not be reviewed
5 by petition for writ.

6 (2) Except as provided in this section, the Department of Justice
7 shall destroy a specimen and sample and expunge the searchable
8 DNA database profile pertaining to the person who has no present
9 or past qualifying offense of record upon receipt of a court order
10 that verifies the applicant has made the necessary showing at a
11 noticed hearing, and that includes all of the following:

12 (A) The written request for expungement pursuant to this
13 section.

14 (B) A certified copy of the court order reversing and dismissing
15 the conviction or case, or a letter from the district attorney
16 certifying that no accusatory pleading has been filed or the charges
17 which served as the basis for collecting a DNA specimen and
18 sample have been dismissed prior to adjudication by a trier of fact,
19 the defendant has been found factually innocent, the defendant has
20 been found not guilty, the defendant has been acquitted of the
21 underlying offense, or the underlying conviction has been reversed
22 and the case dismissed.

23 (C) Proof of written notice to the prosecuting attorney and the
24 Department of Justice that expungement has been requested.

25 (D) A court order verifying that no retrial or appeal of the case
26 is pending, that it has been at least 180 days since the defendant
27 or minor has notified the prosecuting attorney and the Department
28 of Justice of the expungement request, and that the court has not
29 received an objection from the Department of Justice or the
30 prosecuting attorney.

31 (d) Upon order from the court, the Department of Justice shall
32 destroy any specimen or sample collected from the person and any
33 searchable DNA database profile pertaining to the person, unless
34 the department determines that the person is subject to the
35 provisions of this chapter because of a past qualifying offense of
36 record or is or has otherwise become obligated to submit a blood
37 specimen or buccal swab sample as a result of a separate arrest,
38 conviction, juvenile adjudication, or finding of guilty or not guilty
39 by reason of insanity for an offense described in subdivision (a)
40 of Section 296, or as a condition of a plea.

1 The Department of Justice is not required to destroy analytical
2 data or other items obtained from a blood specimen or saliva, or
3 buccal swab sample, if evidence relating to another person subject
4 to the provisions of this chapter would thereby be destroyed or
5 otherwise compromised.

6 Any identification, warrant, probable cause to arrest, or arrest
7 based upon a databank or database match is not invalidated due
8 to a failure to expunge or a delay in expunging records.

9 (e) Notwithstanding any other law, the Department of Justice
10 DNA Laboratory is not required to expunge DNA profile or
11 forensic identification information or destroy or return specimens,
12 samples, or print impressions taken pursuant to this section if the
13 duty to register under Section 290 or 457.1 is terminated.

14 (f) Notwithstanding any other law, including Sections 17,
15 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve
16 a person of the separate administrative duty to provide specimens,
17 samples, or print impressions required by this chapter if a person
18 has been found guilty or was adjudicated a ward of the court by a
19 trier of fact of a qualifying offense as defined in subdivision (a)
20 of Section 296, or was found not guilty by reason of insanity or
21 pleads no contest to a qualifying offense as defined in subdivision
22 (a) of Section 296.

23 (g) This section shall become inoperative if the California
24 Supreme Court rules to uphold the California Court of Appeal
25 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
26 to the provisions of Section 299 of the Penal Code, as amended
27 by Section 9 of the DNA Fingerprint, Unsolved Crime and
28 Innocence Protection Act, Proposition 69, approved by the voters
29 at the November 2, 2004, statewide general election, in which case
30 this section shall become inoperative immediately upon that ruling
31 becoming final.

32 SEC. 8. Section 299 is added to the Penal Code, to read:

33 299. (a) A person whose DNA profile has been included in
34 the databank pursuant to this chapter shall have his or her DNA
35 specimen and sample destroyed and searchable database profile
36 expunged from the databank program if the person has no past or
37 present offense or pending charge which qualifies that person for
38 inclusion within the state's DNA and Forensic Identification
39 Database and Databank Program and there otherwise is no legal
40 basis for retaining the specimen or sample or searchable profile.

(b) Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile shall have his or her specimen and sample destroyed and searchable database profile expunged from the databank program if any of the following apply:

(1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA and Forensic Identification Database and Databank Program have been dismissed prior to adjudication by a trier of fact, in which case the district attorney shall submit a letter to the Department of Justice as soon as these conditions have been met.

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, in which case the court shall forward its order to the Department of Justice upon disposition of the case.

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code, in which case the court shall forward its order to the Department of Justice upon disposition of the case.

(4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense, in which case the court shall forward its order to the Department of Justice upon disposition of the case.

(c) Except as provided in this section, the Department of Justice shall destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of the following:

(1) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the

1 underlying offense, or the underlying conviction has been reversed
2 and the case dismissed.

3 (2) A court order verifying that no retrial or appeal of the case
4 is pending.

5 ~~Upon order from the court, the~~ Pursuant to this section, the
6 Department of Justice shall destroy any specimen or sample
7 collected from the person and any searchable DNA database profile
8 pertaining to the person, unless the department determines that the
9 person is subject to the provisions of this chapter because of a past
10 qualifying offense of record or is or has otherwise become
11 obligated to submit a blood specimen or buccal swab sample as a
12 result of a separate arrest, conviction, juvenile adjudication, or
13 finding of guilty or not guilty by reason of insanity for an offense
14 described in subdivision (a) of Section 296, or as a condition of a
15 plea.

16 The Department of Justice is not required to destroy analytical
17 data or other items obtained from a blood specimen or saliva, or
18 buccal swab sample, if evidence relating to another person subject
19 to the provisions of this chapter would thereby be destroyed or
20 otherwise compromised.

21 Any identification, warrant, probable cause to arrest, or arrest
22 based upon a databank or database match is not invalidated due
23 to a failure to expunge or a delay in expunging records.

24 (e) Notwithstanding any other law, the Department of Justice
25 DNA Laboratory is not required to expunge DNA profile or
26 forensic identification information or destroy or return specimens,
27 samples, or print impressions taken pursuant to this section if the
28 duty to register under Section 290 or 457.1 is terminated.

29 (f) Notwithstanding any other law, including Sections 17,
30 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve
31 a person of the separate administrative duty to provide specimens,
32 samples, or print impressions required by this chapter if a person
33 has been found guilty or was adjudicated a ward of the court by a
34 trier of fact of a qualifying offense as defined in subdivision (a)
35 of Section 296, or was found not guilty by reason of insanity or
36 pleads no contest to a qualifying offense as defined in subdivision
37 (a) of Section 296.

38 (g) This section shall only become operative if the California
39 Supreme Court rules to uphold the California Court of Appeal
40 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard

1 to the provisions of Section 299 of the Penal Code, as amended
2 by Section 9 of the DNA Fingerprint, Unsolved Crime and
3 Innocence Protection Act, Proposition 69, approved by the voters
4 at the November 2, 2004, statewide general election, in which case
5 this section shall become operative immediately upon that ruling
6 becoming final.

7 SEC. 9. Section 300 of the Penal Code is amended to read:

8 300. (a) This chapter does not limit or abrogate any existing
9 authority of law enforcement officers to take, maintain, store, and
10 utilize DNA or forensic identification markers, blood specimens,
11 buccal swab samples, saliva samples, or thumb or palm print
12 impressions for identification purposes.

13 (b) A law enforcement agency may use a publicly available
14 database, excluding a law enforcement database that is not linked
15 to the Combined DNA Index System (CODIS), if the case being
16 investigated involves a homicide or sexual assault involving force
17 and the case is unsolved and all investigative leads have been
18 exhausted, in which case the law enforcement agency shall review
19 nonforensic information in order to identify additional evidence
20 bearing on relatedness.